

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONALD L. THOMAS, JR.,

Petitioner,

v.

DOUG WADDINGTON,

Respondent.

Case No. C07-5059 RJB/KLS

REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED
IN FORMA PAUPERIS

Noted for: March 23, 2007

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at Washington Corrections Center, Shelton, Washington. He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis*. (Dkt. # 1). Because Petitioner appears to have sufficient funds with which to pay the \$5.00 court filing fee, the undersigned recommends the court deny the application.

I. DISCUSSION

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit. *See Temple v. Ellerthorpe*, 586

1 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595 (S.D.Tex. 1977); *U.S. ex rel. Irons v.*
 2 *Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku v. Britton*, 357 F.Supp. 825 (D.Kan. 1973),
 3 *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*, 61 F.R.D. 639 (M.D.Pa. 1974).

4 By requesting the court to proceed *in forma pauperis*, Petitioner is asking the government to incur
 5 the filing fee because he is unable to afford the costs necessary to proceed with his petition for *habeas*
 6 *corpus*. Petitioner's affidavit reflects that he earns \$160.00 per month and has an average spendable
 7 balance of \$33.00 per month. While the undersigned recognizes that the funds to which petitioner has
 8 access may not be great, given the fact that a prisoner's basic needs are provided for while incarcerated, it
 9 is not unreasonable to expect Petitioner to pay the minimal filing fee of \$5.00 required to proceed with this
 10 action from those funds.

11 12 II. CONCLUSION

13 Because it is reasonable to expect Petitioner to incur the costs to proceed with his petition, the
 14 undersigned recommends that the court deny his application to proceed *in forma pauperis*. Accordingly,
 15 the undersigned also recommends that the Court order Petitioner to pay the required filing fee within thirty
 16 (30) days of the Court's order.

17 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),
 18 the parties shall have ten (10) days from service of this Report and Recommendation to file written
 19 objections thereto. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
 20 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
 21 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **March 23,**
 22 **2007**, as noted in the caption.

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24 Dated this 21st day of February, 2007.

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27 Karen L. Strombom
 28 United States Magistrate Judge